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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PATRICIA McCANN CAMPO,

Plaintiff and Appellant,

v.

PAUL PFINGST, DISTRICT ATTORNEY
OF SAN DIEGO COUNTY et al.,

Defendants and Respondents.

D041312

(Super. Ct. No. GIC781955)

APPEAL from a judgment of the Superior Court of San Diego County, Robert E.
May, Judge. Affirmed.

Plaintiff Patricia McCann Campo (Campo) appeals a judgment in favor of
defendants Paul Pfingst as District Attorney of San Diego County and the County of
San Diego (together County) after the court sustained without leave to amend County's
demurrer to Campo's class action complaint for wages and other allowances. Campo
sought damages on the theory she and others, employed as temporary expert

professionals in the Child Support Enforcement Bureau of the district attorney's office, were intentionally misclassified as a means of paying them less than other deputy district attorneys and avoiding the civil service system. Campo contends: (1) the complaint states a cause of action for intentional misclassification and properly alleges County's compensation ordinance is contrary to law; (2) she was not required to exhaust administrative remedies; (3) she was not required to file a claim under the Government Claims Act or County's own claims procedure; and (4) the court should have granted leave to amend. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Campo was employed by County as a temporary expert professional in the San Diego County District Attorney's office, Bureau of Child Support Enforcement, from July 2000 to January 2002. Although Campo performed the same work as that of deputy district attorneys in the Bureau of Child Support Enforcement, she was paid less and received no benefits.

Campo sued County on behalf of herself and others similarly situated for wages and other allowances. The court sustained County's demurrer with leave to amend.

Campo filed a first amended complaint, alleging her position did not meet the criteria for designation as a temporary expert professional. She further alleged County enacted a classification scheme that is void as contrary to law and classified her as a temporary expert professional in order to facilitate its scheme to pay her substantially less than other attorneys in the district attorney's office. County demurred to the first

amended complaint. After a hearing, the court sustained the demurrer without leave to amend and dismissed Campo's complaint.

DISCUSSION

I

On appeal from a judgment of dismissal after a demurrer is sustained without leave to amend, we review the order de novo, exercising our independent judgment on whether, as a matter of law, the complaint states a cause of action. (*Lazar v. Hertz Corp.* (1999) 69 Cal.App.4th 1494, 1501; *Trinkle v. California State Lottery* (1999) 71 Cal.App.4th 1198, 1201.) We assume the truth of all properly pleaded facts, as well as facts inferred from the pleadings and those of which judicial notice may be taken, and give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814; *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 579; *Randi W. v. Muroc Joint Unified School Dist.* (1997) 14 Cal.4th 1066, 1075.) We examine the complaint's factual allegations to determine whether they state a cause of action on any available legal theory. (*Wolfe v. State Farm Fire & Casualty Ins. Co.* (1996) 46 Cal.App.4th 554, 560.)

The granting of leave to amend involves an exercise of the trial court's discretion. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126; *Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) Thus, we must also decide whether there is a reasonable possibility any defect can be cured by amendment. If no such possibility exists, there has been no abuse of discretion and we must affirm. The plaintiff has the

burden of proving a reasonable possibility of curing a defect by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

II

All employment with the County of San Diego exists solely by virtue of a personnel system created by the San Diego County Charter (County Charter). (County Charter, art. IX, § 900.)¹ Although the personnel director administers the personnel system, the County Civil Service Commission (Commission) shares broad plenary responsibility for protecting the merit basis of that system. (§ 904.) The Commission's investigative power extends to "the conduct and operations of all departments," and in this regard, "the Commission may make any necessary orders, including but not limited to back pay and classification adjustments." (§§ 907, 907.1.)

County employment is divided into classified and unclassified services. (§ 908.) The Commission is responsible for all aspects of County employment in the classified service, including review and modification of civil service rules. (§§ 904.3, 910, 910.1.) However, civil service rules are inapplicable to persons in the unclassified service, who acquire no tenure in their positions and serve at the pleasure of their appointing authority. Unclassified employees are governed solely by rules adopted by the Board of Supervisors. (§ 909.2.) The County Charter expressly categorizes temporary expert professionals in the unclassified service. (§ 908.2(o).)

¹ All further section references are to article IX of the San Diego County Charter.

A

Campo was hired and worked as a County employee. She disputes she was a temporary expert professional, alleging she performed the work of a classified employee and thus was entitled to be paid the same as other classified employees. Campo also alleges County's classification scheme is void as contrary to law because the position purported to be exempted from classified service for specified periods does not meet the definition of temporary expert professional as set forth in County's human resources policy and procedures manual. Assuming the truth of these facts, as we must, Campo was a classified employee under the civil service rules. As such, she was required to first present her classification and salary grievances to the Commission, the administrative body created to protect the merit basis of the County's personnel system. (§ 904.) However, Campo's complaint did not allege she pursued or exhausted her administrative remedies.

B

A litigant must exhaust available administrative remedies before resorting to the courts. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291-292; *Styne v. Stevens* (2001) 26 Cal.4th 42, 56.) The exhaustion requirement is a jurisdictional prerequisite to obtaining any judicial relief. (*Abelleira v. District Court of Appeal, supra*, 17 Cal.2d at p. 293; *Civil Service Assn. v. City and County of San Francisco* (1978) 22 Cal.3d 552, 565; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 70; *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 495.) Thus, a demurrer may properly be sustained when a plaintiff has not exhausted available

administrative remedies. (*Logan v. Southern Cal. Rapid Transit Dist.* (1982) 136 Cal.App.3d 116, 122-124.)

"The basic purpose for the exhaustion doctrine is to lighten the burden of overworked courts in cases where administrative remedies are available and are as likely as the judicial remedy to provide the wanted relief.' [Citation.] Even where the administrative remedy may not resolve all issues or provide the precise relief requested by a plaintiff, the exhaustion doctrine is still viewed with favor 'because it facilitates the development of a complete record that draws on administrative expertise and promotes judicial efficiency.' [Citation.] It can serve as a preliminary administrative sifting process [citation], unearthing the relevant evidence and providing a record which the court may review. [Citation.]" (*Yamaha Motor Corp. v. Superior Court* (1986) 185 Cal.App.3d 1232, 1240-1241.) Even where the plaintiff is seeking damages rather than reinstatement to employment, "courts accord recognition to the 'expertise' of the organization's quasi-judicial tribunal, permitting it to adjudicate the merits of the plaintiff's claim in the first instance." (*Westlake Community Hosp. v. Superior Court* (1976) 17 Cal.3d 465, 476.) An exception to the rule requiring exhaustion of administrative remedies applies when an administrative remedy is unavailable or inadequate. (*Tiernan v. Trustees of Cal. State University & Colleges* (1982) 33 Cal.3d 211, 217.)

III

Campo does not claim to have exhausted her administrative remedies, but instead argues she was not required to do so because: (1) the primary jurisdiction doctrine

applies; and (2) an administrative remedy is unavailable or inadequate for class actions such as the one she filed.

A

The primary jurisdiction doctrine requires a litigant to apply to an outside regulatory agency for relief before pursuing a civil action. (*Palmer v. Regents of University of California* (2003) 107 Cal.App.4th 899, 906.) That doctrine "arises in the context of complex regulatory schemes utilizing expert administrative agencies." (*Ibid.*) In such a case, the judicial process is suspended pending referral of issues placed within the competence of the administrative body for its views. (*Id.* at p. 907, citing *Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 390.) In contrast, the exhaustion of administrative remedies doctrine applies where a claim is cognizable in the first instance by an administrative agency alone and judicial interference is withheld until the administrative process has run its course. (*Farmers Ins. Exchange v. Superior Court, supra*, 2 Cal.4th at p. 390.)

The issue of whether Campo was misclassified in violation of County's compensation ordinance does not involve complex regulatory laws. Rather, Campo was required to utilize County's internal grievance procedures for personnel matters through Commission's investigative powers. (§§ 904, 904.1, 907, 907.1.) Campo's claims particularly raise issues within Commission's expertise because they involve complaints about County's personnel policies and practices with respect to classification and compensation, and the alleged violation of County's employment rules and ordinances. Because Campo's claim is cognizable in the first instance by an administrative agency,

the exhaustion doctrine, not the primary jurisdiction doctrine, applies here. (*Palmer v. Regents of University of California, supra*, 107 Cal.App.4th at pp. 906-907.)

B

Campo also asserts she was excused from exhausting administrative remedies because the civil service rules do not permit class actions and accordingly, the available procedure is inadequate. However, the filing of a class action is not itself an exception to the exhaustion requirement. (*Lopez v. Civil Service Com.* (1991) 232 Cal.App.3d 307, 312.) "If we were to permit a [County] employee, on important policy questions which vitally affect the [County], to by-pass the very office charged with the duty of managing the [County's] affairs solely because his grievance affects more than one employee, we would foist upon the judicial branch the arduous task of solving governmental policy questions without giving the responsible governmental branch the opportunity to solve its own problems at the administrative level." (*Morton v. Superior Court* (1970) 9 Cal.App.3d 977, 983-984.)

Here, Commission's primary function is to protect the civil service system, the integrity of which Campo claims is threatened by the temporary expert professional classification. The County Charter gives Commission broad authority over all matters concerning the County's personnel system, including hearing claims of improper classification and making orders for "classification adjustments." (§§ 907, 907.1.) Civil service rules provide that "employees" may seek review of a classification action. (County of San Diego Civil Service Rules, rule XII, § 12.6.) Necessarily, "classification adjustments" sought by "employees" affect entire employment classifications, not just a

single applicant. Thus, the designation of Campo's complaint as a class action does not excuse her from exhausting administrative remedies.

IV

By failing to pursue or exhaust administrative remedies, Campo cannot now obtain any judicial relief, nor is there a reasonable possibility she could cure this defect by amendment. Accordingly, the court properly sustained County's demurrer without leave to amend.²

DISPOSITION

The judgment is affirmed. Respondents are entitled to costs on appeal.

HALLER, J.

WE CONCUR:

BENKE, Acting P. J.

HUFFMAN, J.

² In light of our holding, we need not address Campo's further contention she was not required to file a claim under the Government Claims Act or County's own claims procedures.